REMARKS

Claims 1-14 are pending in the application (Claims 15-23 have been withdrawn from consideration). Each of Claims 1 and 14, the independent claims, has been amended herein.

Claims 1-5, 12 and 13-14 were rejected under 35 USC 102(e) as being anticipated by US Patent Publication 20030046383 (Lee) and Claims 6-11 were rejected under 35 USC 103(a) as being unpatentable over Lee in view of US Patent 7,068,769 (Weaver). Each of these rejections is respectfully traversed and reconsideration is requested.

Independent Claim 1 is directed to a method for synchronously transferring an amount of local data from a local data storage medium to a remote data storage medium via a communications link having an available bandwidth, the local data storage medium associated with a local computer system having a local processor sequentially responsive to a plurality of local computer programs, the remote data storage medium associated with a remote computer system non-redundant of the local computer system and having a remote processor, the method including evaluating local user conditions associated with transfer of the local data, based on the *currently* available bandwidth and the amount of local data, approximating a transfer time for the local data, based on the approximated transfer time, the local user conditions, and a status of the local processor, selecting a time to transmit the local data to the remote data storage medium, and automatically arranging transfer of the local data to the remote data storage medium via the communications link at the selected time.

Independent Claim 14 is an apparatus claim corresponding to method Claim 1, and specifically is directed to an apparatus for synchronously transferring an amount of local data from a local data storage medium to a remote data storage medium ...., the apparatus including a computer-readable storage medium and a processor responsive to the computer-readable storage medium and to a computer program, the computer program, when loaded into the processor, operative to perform a method including evaluating local user conditions associated with transfer of the local data, based on the *currently* available bandwidth and the amount of local data, approximating a transfer time for the local data, based on the approximated transfer time, the local user conditions, and a status of the local processor, selecting a time to transmit the local data to the remote data storage medium, and automatically arranging transfer of the local data to the remote data storage medium via the communications link at the selected time.

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Lee is directed to a method for "measuring network performance from a server" – in which "when the server receives a data transfer request from a client, it records operation information such as the time it takes to transfer the requested data, the size of the data, etc. and derives performance evaluation data such as round-trip time, bandwidth, packet loss, etc. that indicate network performance between the client and the server" (Abst.). Lee's method/system simply allows for the aggregation and analysis of past performance data – Lee's method/system does *not* however, *based upon the approximated time to transfer the data, select a time to transmit the data*, and then automatically arrange the transfer *at that selected time*.

With regard to Applicants' Claim 1 recited elements of:
> "evaluating local user conditions associated with transfer of the local data" and "based on the [currently] available bandwidth and the amount of local data, approximating a transfer time for the local data",

the Action takes the position that Lee provides such teaching of bandwidth "(i.e., the *average* bandwidth [0023]" and "approximating a transfer time", "(i.e., The operation is then used to generate the values of predefined performance evaluation data (or metrics) indicative of the network performance experienced by the client of the server. Some types of communication operation information may, of course, be used directly as the values of selected performance evaluation metrics. [0023])".

Applicants submit that Lee fails to teach or even to suggest a method/apparatus in which *a time at which the data will be transferred is selected, based upon the approximate time that it will take to transfer the data (which is based on currently available bandwidth and the amount of data to be transferred), the local user conditions and the status of the local processor.*

In order to clearly place the application in condition for allowance, and to even further define over Lee, Applicants have amended each of independent Claims 1 and 14 to recite the step of "based upon the currently available bandwidth and the amount of local data, approximating a transfer time for the local data".
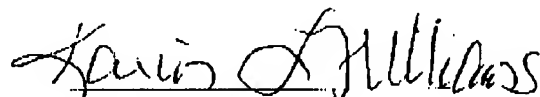
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Lee's method/system to measure the performance of a network, does not teach or even suggest the step of approximating a transfer time for local data based upon *currently* available bandwidth and the amount of local data, and then, based on (1) the approximated transfer time, (2) the current local user conditions, and (3) upon a status of the local processor, *selecting a time to transmit the local data to the remote data storage medium* and automatically arranging transfer of the local data at the selected time.

For at least the foregoing reasons, Applicants respectfully submit that each of amended independent Claims 1 and 14 is patentable over Lee.

Dependent Claims 2-13 are also believed to be clearly patentable over the art of record for all of the reasons indicated above with respect to Claim 1, from which they depend, and even further distinguish over the cited references by reciting additional limitations.

Should the Examiner be of the view that an interview would expedite consideration of this Amendment or of the application at large, request is made that the Examiner telephone the Applicants' undersigned attorney at (908) 518-7700 in order that any outstanding issues be resolved.

Respectfully submitted,

Karin L. Williams
Registration No. 36,721

Please Continue to Send All Correspondence to:

Mayer & Williams PC
251 North Avenue West, 2nd Floor
Westfield NJ 07090

(908) 518-7700
(908) 518-7795 fax

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